

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**MELVIN TONEY**

**PETITIONER**

**v.**

**CIVIL ACTION NO. 2:23-cv-167-TBM-BWR**

**BURL CAIN**

**RESPONDENT**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

This matter is before the Court on the submission of the Report and Recommendation [39] entered by United States Magistrate Judge Bradley W. Rath on February 4, 2025. Judge Rath recommends granting Respondent Burl Cain’s renewed Motion to Dismiss [33], denying Cain’s initial Motion to Dismiss [19] as moot, denying Petitioner Melvin Toney’s Motion for Summary Judgment [20], denying Toney’s Motion to Compel [28], and dismissing Toney’s Petition for Writ of Habeas Corpus [1] and Amended Petition for Writ of Habeas Corpus [9] with prejudice. Toney has not filed an objection to the Report and Recommendation, and the time for filing an objection has expired.<sup>1</sup>

“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b) advisory committee’s note to 1983 addition (citations omitted); *see Casas v. Aduddell*, 404 F. App’x 879, 881 (5th Cir. 2010) (“When a party fails timely to file written objections to the magistrate judge’s proposed findings, conclusions, and recommendation, that party is barred from attacking on appeal the unobjected-to proposed findings and conclusions which the district court accepted, except for plain error”) (citing *Douglass v. United Serv. Auto Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir.

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<sup>1</sup> A copy of the Report and Recommendation [39] was mailed to Toney at the address listed on the docket on February 4, 2025.

1996) (en banc); 28 U.S.C. § 636(b)(1)). Having considered Judge Rath's Report and Recommendation, the Court finds that it is neither clearly erroneous nor contrary to law.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [39] entered by United States Magistrate Judge Bradley W. Rath on February 4, 2025, is ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED AND ADJUDGED that Respondent Burl Cain's renewed Motion to Dismiss [33] is GRANTED.

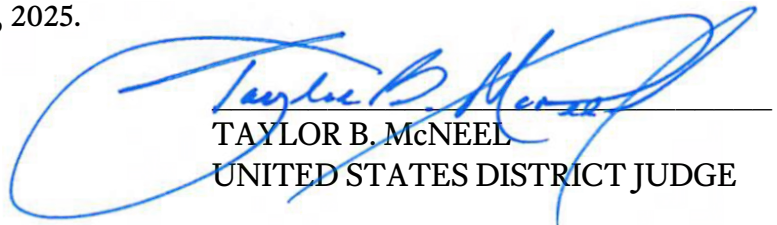
IT IS FURTHER ORDERED AND ADJUDGED that Respondent Burl Cain's initial Motion to Dismiss [19] is DENIED as moot.

IT IS FURTHER ORDERED AND ADJUDGED that Petitioner Melvin Toney's Motion for Summary Judgment [20] is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that Petitioner Melvin Toney's Motion to Compel [28] is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that Petitioner Melvin Toney's Petition for Writ of Habeas Corpus [1] and Amended Petition for Writ of Habeas Corpus [9] are DISMISSED WITH PREJUDICE.

THIS, the 5th day of March, 2025.

  
TAYLOR B. McNEEL  
UNITED STATES DISTRICT JUDGE